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the following calendar year in accordance with 5 CFR part 530, subpart B. The full performance award, however, is charged against the agency bonus pool under § 534.405(b) for the fiscal year in which the initial payment was made.

[52 FR 2, Jan. 2, 1987, as amended at 55 FR 1353, Jan. 16, 1990; 57 FR 10125, Mar. 24, 1992; 60 FR 6389, Feb. 2, 1995; 64 FR 72889, Dec. 29, 1999; 69 FR 2051, Jan. 13, 2004. Redesignated and amended at 69 FR 70362, 70366, Dec. 6, 2004]

§ 534.406 Conversion to the SES pay system.

(a) On the first day of the first applicable pay period beginning on or after January 1, 2004, agencies must convert an existing SES rate of basic pay for a senior executive to an SES rate of basic pay that is equal to the employee's rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 which the senior executive was receiving immediately before that date, except as provided in paragraph (b) of this section. The newly converted rate is the senior executive's SES rate of basic pay. An agency's establishment of an SES rate of basic pay for a senior executive under this paragraph is not considered a pay adjustment for the purpose of applying § 534.404(c).

(b) An SES member's rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 to which the employee was entitled on November 24, 2003, may not be reduced for 1 year after the first day of the first applicable pay period beginning on or after January 1, 2004. If an SES member's rate of basic pay, plus any applicable locality-based comparability payment under 5 U.S.C. 5304 to which the employee was entitled on November 23, 2003, is higher than the rate in effect immediately prior to the first day of the first applicable pay period beginning on or after January 1, 2004, the agency must use the higher rate for the purpose of converting SES members to the SES pay system.

(c) An SES member who is assigned to a position outside the 48 contiguous States and the District of Columbia to a position overseas or in Alaska, Hawaii, Guam or the Commonwealth of

the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, or other U.S. territories and possessions as of the first day of the first applicable pay period beginning on or after January 1, 2004, will be converted to a new rate of basic pay that equals the senior executive's current rate of basic pay, plus the amount of locality pay authorized under 5 U.S.C. 5304 for the applicable locality pay area upon the employee's initial reassignment to a position in the 48 contiguous States or the District of Columbia. The adjustment will be prospective, not retroactive, and it will not be considered a pay adjustment for the purpose of applying § 534.404(c). If the senior executive's rate of basic pay did not exceed the rate for level III of the Executive Schedule while assigned to a position outside the 48 contiguous States or the District of Columbia, upon initial reassignment to a locality pay area the senior executive's converted rate of basic pay may not exceed the rate for level III of the Executive Schedule. The newly converted rate is the senior executive's SES rate of basic pay.

(d) On the first day of the first applicable pay period beginning on or after January 1, 2004, a law enforcement officer (LEO), as defined in 5 CFR 531.301, who is a member of the SES will have his or her rate of basic pay, plus any applicable special geographic pay adjustment established for LEOs under section 404(a) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101-509) to which he or she was entitled immediately before that date, converted to a new SES rate of basic pay. The newly converted rate is the senior executive's SES rate of basic pay, and any pay adjustments approved on or after January 11, 2004, must be computed based on the senior executive's converted rate of basic pay. Conversion to a new SES rate of basic pay is not considered a pay adjustment for the purpose of applying § 534.404(c).

[69 FR 70366, Dec. 6, 2004]

§ 534.407 Pay computation and aggregate compensation.

(a) Except as provided in paragraph (b) of this section, pay for members of the SES must be computed in accordance with 5 U.S.C. 5504(b).

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(b) To determine the hourly rate of pay for members of the SES, divide the annual SES rate of basic pay by 2,087 and round to the nearest cent, counting one-half cent and over as a whole cent. To derive the biweekly rate, multiply the hourly rate by 80.

(c) Senior executives are subject to the applicable aggregate limitation on pay in 5 CFR part 530, subpart B.

[69 FR 70367, Dec. 6, 2004]

§ 534.408 Restrictions on premium pay and compensatory time.

(a) Under 5 U.S.C. 5541(2)(xvi) and 5 CFR 550.101(b)(18), members of the Senior Executive Service (SES) are excluded from premium pay, including overtime pay.

(b) Since SES members are not eligible for overtime pay, they also are not eligible for compensatory time in lieu of overtime pay for work performed as an SES member. SES members are eligible, however, for compensatory time off for religious purposes under 5 U.S.C. 5550a and 5 CFR part 550, subpart J.

[60 FR 6390, Feb. 2, 1995, Redesignated and amended at 69 FR 70362, 70367, Dec. 6, 2004]

Subpart E—Pay for Senior-Level and Scientific and Professional Positions

SOURCE: 56 FR 18662, Apr. 23, 1991, unless otherwise noted.

§ 534.501 Coverage.

(a) This subpart implements 5 U.S.C. 5376 and applies to—

(1) Senior-level (SL) positions classified above GS-15 pursuant to 5 U.S.C. 5108; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104.

(b) This subpart does not apply to—

(1) Senior Executive Service positions established under 5 U.S.C. 3132, unless the incumbent of the position declined to convert to the SES and under § 317.303 of this chapter remained at grade GS-16, 17, or 18 (now the SL pay system) or under the ST pay system;

(2) Positions in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, Defense Intelligence Executive

Service, or Senior Cryptologic Executive Service; or

(3) Positions where pay is fixed by administrative action and is limited to level IV of the Executive Schedule under 5 U.S.C. 5373.

[56 FR 18662, Apr. 23, 1991, as amended at 57 FR 10125, Mar. 24, 1992]

§ 534.502 Pay range.

A pay rate fixed under this subpart shall be—

(a) Not less than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule; and

(b) Not greater than the rate of basic pay payable for level IV of the Executive Schedule.

§ 534.503 Pay setting.

(a) Each agency with positions subject to this subpart shall establish written procedures for setting the pay of incumbents of the positions in accordance with the provisions of law and OPM regulations. The head of each agency, or his or her designee, shall set the rate of pay of individuals under this subpart in accordance with the agency's written procedures.

(b) The agency's written procedures shall include—

(1) A description of the structure of the pay system;

(2) The criteria that will be used to assign rates of pay to individual employees;

(3) The 12-month waiting period on pay adjustments, as provided in paragraph (c) of this section;

(4) The designation of the official or officials who will have authority to set pay; and

(5) The management controls that will be applied to assure compliance with the procedures and a reasonable distribution of pay within the pay range.

(c) Pay of an individual may not be adjusted more than once in any 12-month period.

(1) A pay adjustment includes the assignment of a pay rate upon initial appointment.

(2) An annual adjustment in pay under § 534.504 of this subpart shall not be considered a pay adjustment under this paragraph if it does not exceed the greater of the annual General Schedule